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6 UNITED STATES DISTRICT COURT  
7 WESTERN DISTRICT OF WASHINGTON  
8 AT SEATTLE

9 JENNIFER G.,

10 Plaintiff,

CASE NO. C19-5304-MAT

11 v.

ORDER RE: SOCIAL SECURITY  
DISABILITY APPEAL

12 ANDREW M. SAUL,  
Commissioner of Social Security,

13 Defendant.

14 Plaintiff proceeds through counsel in her appeal of a final decision of the Commissioner of  
15 the Social Security Administration (Commissioner). The Commissioner denied Plaintiff's  
16 applications for Supplemental Security Income (SSI) and Disability Insurance Benefits (DIB) after  
17 a hearing before an Administrative Law Judge (ALJ). Having considered the Appeals Council's  
18 decision, the ALJ's decision, the administrative record (AR), and all memoranda of record, this  
19 matter is REVERSED and REMANDED for further administrative proceedings.

20 **FACTS AND PROCEDURAL HISTORY**

21 Plaintiff was born on XXXX, 1973.<sup>1</sup> She has one year of college education, and has  
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23 <sup>1</sup> Dates of birth must be redacted to the year. Fed. R. Civ. P. 5.2(a)(2) and LCR 5.2(a)(1).

1 worked as a childcare provider, security equipment installer, airport security screening officer,  
2 laundromat manager, and patient registration representative. (AR 63, 69-74, 334-38.)

3 Plaintiff applied for SSI in October 2013 and DIB in April 2014. (AR 17, 122, 273-79.)  
4 Those applications were denied and Plaintiff timely requested a hearing. (AR 145-48, 150-52, 157-  
5 60.)

6 On December 14, 2016; April 12, 2017; and September 25, 2017; ALJ Marilyn Mauer held  
7 hearings, taking testimony from Plaintiff and a vocational expert (VE). (AR 39-121.) On October  
8 24, 2017, the ALJ issued a decision finding Plaintiff not disabled. (AR 17-32.) Plaintiff timely  
9 appealed. The Appeals Council granted Plaintiff's request for review, and entered a decision on  
10 February 14, 2019, finding Plaintiff not disabled. (AR 1-8.) Plaintiff appealed this decision of the  
11 Commissioner to this Court.<sup>2</sup>

## 12 **JURISDICTION**

13 The Court has jurisdiction to review the Commissioner's decision pursuant to 42 U.S.C. §  
14 405(g).

## 15 **DISCUSSION**

16 The Commissioner follows a five-step sequential evaluation process for determining  
17 whether a claimant is disabled. *See* 20 C.F.R. §§ 404.1520, 416.920 (2000). At step one, it must  
18 be determined whether the claimant is gainfully employed. The Commissioner found Plaintiff had  
19 not engaged in substantial gainful activity since October 1, 2013, the amended alleged onset date.  
20 (AR 5, 20.) At step two, it must be determined whether a claimant suffers from a severe

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22 <sup>2</sup> The final decision of the Commissioner is the Appeals Council's decision, but the Appeals  
23 Council incorporated by reference much of the ALJ's decision. (AR 1-8.) Thus, this Order hereinafter  
refers to the findings of the Appeals Council and the ALJ collectively as the decision of "the  
Commissioner," and refers to the findings in the decisions separately only where necessary.

1 impairment. The Commissioner found severe Plaintiff's asthma, obesity, bilateral thumb joint  
2 osteoarthritis, history of colitis, anxiety, depression, insomnia, and posttraumatic stress disorder  
3 (PTSD). (AR 5, 20-21.) Step three asks whether a claimant's impairments meet or equal a listed  
4 impairment. The Commissioner found that Plaintiff's impairments did not meet or equal the  
5 criteria of a listed impairment. (AR 5, 21-22.)

6 If a claimant's impairments do not meet or equal a listing, the Commissioner must assess  
7 residual functional capacity (RFC) and determine at step four whether the claimant has  
8 demonstrated an inability to perform past relevant work. The Commissioner found Plaintiff  
9 capable of performing medium work with additional limitations: she can perform work without  
10 exposure to hazards such as unprotected heights and large moving equipment. She can work in a  
11 setting with no more than occasional exposure to inhaled irritants. She can understand, remember,  
12 and apply information consistent with the completion of tasks that require a GED reasoning level  
13 of 2 or less in a setting with no public contact and occasional co-worker contact. She requires  
14 access to a restroom, so she should not work in outdoor settings. (AR 5, 22-23.) With that  
15 assessment, the Commissioner found Plaintiff unable to perform any past relevant work. (AR 6,  
16 29.)

17 If a claimant demonstrates an inability to perform past relevant work, the burden shifts to  
18 the Commissioner to demonstrate at step five that the claimant retains the capacity to make an  
19 adjustment to work that exists in significant levels in the national economy. With citation to VE  
20 testimony, the Commissioner found Plaintiff capable of transitioning to other representative  
21 occupations, such as small products assembler, agricultural sorter, and office helper. (AR 6, 30-  
22 31.)

23 This Court's review of the Commissioner's decision is limited to whether the decision is

1 in accordance with the law and the findings supported by substantial evidence in the record as a  
2 whole. *See Penny v. Sullivan*, 2 F.3d 953, 956 (9th Cir. 1993). Substantial evidence means more  
3 than a scintilla, but less than a preponderance; it means such relevant evidence as a reasonable  
4 mind might accept as adequate to support a conclusion. *Magallanes v. Bowen*, 881 F.2d 747, 750  
5 (9th Cir. 1989). If there is more than one rational interpretation, one of which supports the ALJ's  
6 decision, the Court must uphold that decision. *Thomas v. Barnhart*, 278 F.3d 947, 954 (9th Cir.  
7 2002).

8 Plaintiff argues the Commissioner erred in (1) discounting her subjective symptom  
9 testimony; and (2) assessing certain medical evidence and opinions. The Commissioner argues  
10 that the ALJ's decision is supported by substantial evidence and should be affirmed.

11 Subjective symptom testimony

12 The Commissioner discounted Plaintiff's subjective testimony (AR 24-27), and Plaintiff  
13 argues that the ALJ's reasons for doing so are not clear and convincing, as required in the Ninth  
14 Circuit. *Burrell v. Colvin*, 775 F.3d 1133, 1136-37 (9th Cir. 2014). The Court agrees, for the  
15 following reasons.

16 First, the Commissioner noted that Plaintiff failed to follow through on recommendations  
17 that she engage in mental health counseling, but focused on medication management instead. (AR  
18 24.) It is not clear how Plaintiff's failure to engage in counseling undermines her allegations,  
19 given that the Commissioner also found that medication "reasonably controlled" Plaintiff's  
20 symptoms. (AR 24.) The Commissioner further noted that Plaintiff alleged that her medication  
21 did not entirely resolve her symptoms and that she had problems accessing medication due to lack  
22 of funds (AR 24), but also found that the record showed that Plaintiff did not have "a need for  
23 more than modest treatment" (AR 27). These internally inconsistent findings do not convincingly

1 explain how Plaintiff's lack of counseling indicated that her symptoms were less severe than  
2 alleged.

3 The Commissioner went on to conclude that the medical opinion evidence shows that  
4 Plaintiff is not as limited as she alleges (AR 24-25), but the Commissioner's findings are  
5 conclusory and do not explain how the medical opinions contradict Plaintiff's allegations. In the  
6 absence of specific findings as to how the medical opinion evidence undermines Plaintiff's  
7 allegations, the Court does not find this reasoning to be convincing.

8 Lastly, although the Commissioner found that Plaintiff's activities undermined her  
9 allegations (AR 26), the Commissioner's reasoning is again unconvincing with respect to  
10 Plaintiff's ability to work. The Commissioner found that Plaintiff's ability to work short-term,  
11 part-time jobs was inconsistent with Plaintiff's testimony that she "never leaves her room" (AR  
12 26), but the Commissioner failed to appreciate Plaintiff's description of the limited nature of these  
13 jobs as well as her testimony that her symptoms worsened since the time she had last worked. (*See*  
14 AR 72, 76, 78, 106-07.)

15 Because the Commissioner's reasons to discount Plaintiff's mental-health allegations are  
16 unconvincing, the Commissioner erred and must reconsider her allegations on remand.

### 17 Medical evidence

18 Plaintiff challenges the Commissioner's assessment of two medical opinions, each of  
19 which will be considered in turn.

### 20 Legal standards

21 In general, more weight should be given to the opinion of a treating doctor than to a non-  
22 treating doctor, and more weight to the opinion of an examining doctor than to a non-examining  
23 doctor. *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir. 1996). Where not contradicted by another

1 doctor, a treating or examining doctor's opinion may be rejected only for "clear and convincing"  
2 reasons. *Id.* (quoting *Baxter v. Sullivan*, 923 F.2d 1391, 1396 (9th Cir. 1991)). Where contradicted,  
3 a treating or examining doctor's opinion may not be rejected without "specific and legitimate  
4 reasons' supported by substantial evidence in the record for so doing." *Id.* at 830-31 (quoting  
5 *Murray v. Heckler*, 722 F.2d 499, 502 (9th Cir. 1983)).

6 Terilee Wingate, Ph.D.

7 Dr. Wingate examined Plaintiff in July 2015 and completed a DSHS form opinion  
8 describing her symptoms and limitations. (AR 624-31.) The Commissioner summarized Dr.  
9 Wingate's conclusions and found that the marked limitations indicated by Dr. Wingate were not  
10 consistent with the medical record, or with Plaintiff's ability to work as a childcare provider during  
11 the adjudicated period or her failure to follow through on counseling recommendations. (AR 27-  
12 28.) The Commissioner stated that the other parts of Dr. Wingate's opinion were consistent with  
13 the RFC assessment. (AR 25.)

14 As explained *supra*, the Court finds that the Commissioner's reasoning is not legitimate  
15 with respect to Plaintiff's failure to engage in counseling and her prior childcare work. On remand,  
16 the Commissioner shall reconsider Dr. Wingate's opinion and either credit it or provide legally  
17 sufficient reasons to discount it.

18 Nancy Armstrong, ARNP, & Shawna Purcell, M.D.

19 Plaintiff's treating provider, Ms. Armstrong, completed a form medical source statement  
20 in March 2017, which was affirmed by Dr. Purcell. (AR 745-47.) Although the ALJ had refused  
21 to consider this opinion because it was not submitted at least five days before the hearing (AR 17),  
22 the Appeals Council granted review to consider it, and found it was "inconsistent with other  
23 existing medical evidence of record" and did not warrant changing the ALJ's decision. (AR 5.)

1 Plaintiff challenges the Commissioner's assessment of the Armstrong/Purcell opinion as  
2 "conclusory." Dkt. 10 at 10. The Court agrees with this characterization, and because the Court  
3 has found that the Commissioner's assessment of the medical record contains erroneous reasoning,  
4 the Commissioner should reconsider the Armstrong/Purcell opinion on remand.

5 **CONCLUSION**

6 For the reasons set forth above, this matter is REVERSED and REMANDED for further  
7 administrative proceedings. On remand, the Commissioner shall reconsider Plaintiff's testimony,  
8 Dr. Wingate's opinion, and the Armstrong/Purcell opinion.

9 DATED this 26th day of December, 2019.

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12 Mary Alice Theiler  
13 United States Magistrate Judge  
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